IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPEAL NO.864 OF 2001

Allauddin Imam Mujawar]
Life Convict No.C-12176]
Yeravada Central Prison]
Pune-6.]..Appellant

Vs.

The State of Maharashtra]
At the instance of]
Pandharpur Police Station]..Respondent

...

Ms.S.S.Kaushik Advocate (appointed) for Appellant
Smt.V.R.Bhonsale A.P.P. for State

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CORAM: N.V.DABHOLKAR AND SMT.V.K.TAHILRAMANI,JJ.

DATE : JANUARY 31,2006

ORAL JUDGMENT (PER N.V.DABHOLKAR,J.):

1. This is an appeal under Section 374(2) of the Code of Criminal Procedure, 1973, challenging the Judgment and Order dated 19-7-2001 delivered by 2nd

Additional Sessions Judge, Pandharpur in Sessions Case No.123 of 1998. By the said case, the appellant/accused was tried for offences punishable under Section 302 of the Indian Penal Code (IPC) as also Section 37(1) r/w Section 135 of the Bombay Police Act. He is convicted for offence punishable under Section 302 of IPC and sentenced to suffer life imprisonment, fine of Rs.100/-; in default, rigorous imprisonment for one month. On the second count, he is acquitted and there does not appear any appeal preferred by the State against the said acquittal.

2. According to prosecution story, incident in question took place on 7-8-1998 at about 6:00 or 6:30 p.m. at village Khardi, Taluka Pandharpur, District Solapur in front of Subhani Pan Tapari and Sitaram Maharaj temple. Sk. Lal Gafoor Mulani is the victim of the incident. The first information report of the incident was lodged by PW-8 Bashir Mulani, cousin and neighbour of the victim.

. The incident took place at village Khardi and almost all the witnesses belong to village Khardi. The accused was resident of Ambe Chincholi, Taluka

Pandharpur. The victim was running a grocery shop at Khardi whereas the accused was serving in a sugar factory at Puluj, Taluka Mohol. It is stated that the accused was addicted to liquor and he mortgaged his land to a money lender for raising loan. The said mortgage was redeemed by deceased Sk. Lal and after redemption of the mortgage, he got the land entered in the name of his brother. This is said to be the cause for the accused being enraged against the victim.

. On the date of the incident, when complainant Bashir and PW-2 Rehman were talking by the side of Subhani Pan Shop, the accused and Sk. Lal arrived there. They were having a verbal exchange. The accused took out a knife from his dhoti and dealt two blows to victim Sk. Lal, one on the left side chest and second in the left side arm-pit. Sk. Lal collapsed and the accused took to his heels. The accused was chased by PW-3 Jume Khan, PW-5 Laxman and others. Jume Khan managed to relieve the accused of the knife held by him. Subsequently the accused was handed over to police so also the knife. Sk. Lal was taken to Cottage Hospital, Pandharpur but the Medical Officer declared him

dead. Thereafter PW-8 Bashir lodged report with the Pandharpur Taluka Police Station at 21:00 hours.

3. Except admitting relationship with the deceased (accused is his real brother-in-law i.e. husband of the sister of the deceased), the accused has denied every detail of the prosecution case and thus his defence is that of total denial. He has not utilised the statement under Section 313 of the Code of Criminal Procedure for explaining any of the circumstances adverse to him which were pointed out to him by the learned trial Judge. He has simply stated that he is a patient of tuberculosis. He cannot do any work and he is serving as a Watchman with sugar factory. The case filed against him is false one.

4. The prosecution has in all examined eleven witnesses and there is quite a strong parade of witnesses rendering eye-witness account of the incident. This includes complainant Bashir (PW-8) and Baban Pathan (PW-10). These two witnesses so also PW-2 Rehman and PW-3 Jume Khan are related to the victim. PW-4 Dnyanoba Sutar, PW-5 Laxman Ronge

and PW-7 Hanumant, who have given eye-witness account of the incident, have no relationship with the victim.

. The Medical Officer Dr. Sanjay Kamble (PW-1) had carried out the post-mortem. The accused was arrested and his clothes were seized in the presence of panch witness Sayyed Pathan (PW-6). Arjun Ronge (PW-9) is another panch witness. The police had seized the knife produced by PW-3 Jume Khan. The investigation was carried out by PW-11 Sunil Kolhe, Dy. Superintendent of Police.

5. For the reasons discussed in para Nos.7 to 9, by relying upon the evidence of the Medical Officer as also the inquest panchnama, the learned trial Judge arrived at the conclusion that death of Sk. Lal was homicidal. This is because he has suffered injuries on the vital part of his body which had caused dent in the lung and the heart. The learned trial Judge found that the evidence of PW-8 Bashir was reliable and convincing as the same was corroborated by the fact of immediate lodgment of the first information report (Exhibit-33). The first information report is lodged within three

hours from the incident. He also did not find any material for which evidence of other eye-witnesses could be rejected. Consequently for the reasons discussed in para Nos.12 and 13, the learned Judge has held the evidence of PW-2 Rehman, PW-7 Hanumant, PW-10 Baban as also PW-3 Jume Khan, PW-4 Dnyanoba and PW-5 Laxman to be reliable and strongly corroborating the evidence of the complainant Bashir.

. Although the prosecution had not produced any documentary evidence regarding mortgage of land by the accused and its redemption by the victim Sk. Lal or any other evidence regarding drinking habit of the accused, except oral evidence of the witnesses, the learned trial Judge is of the view that, absence of sufficient proof of motive is insignificant, when there is over-whelming ocular account of the incident corroborated by the medical evidence. The knife and clothes were sent for analysis and report from the Forensic Science Laboratory was not available by the time the trial concluded. According to the learned Judge, this lacuna also did not compel him to disbelieve the eye-witness account. The trial Court has thus held

that the prosecution has proved beyond reasonable doubt, of the accused having inflicted the fatal injuries upon the person of the victim Sk. Lal and thus held him guilty.

6. Heard advocate Ms.Kaushik for the appellant and A.P.P. Smt.Bhosale for the Respondent-State.

. In fact, on going through the evidence that is led before the trial Court, it can be seen that prosecution is armed with depositions of five witnesses who are eye witnesses to the incident i.e. P.W.2 Raheman, P.W.4 Dnyanoba, P.W.7 Hanmant, P.W.8 Bashir and P.W.9 Arjun. No doubt, complainant Bashir (P.W.8) is cousin brother of deceased Shaikh Lal. But, defence is most unlikely to have any advantage of the fact that some of the witnesses are related to deceased Shaikh Lal. Even P.W.2 Raheman is also related to the deceased. Raheman has deposed that Shaikh Lal was husband of his (Raheman’s) maternal aunt. If at all these two witnesses are related to the deceased and hence, interested, P.W.4 Dnyanoba, P.W.7 Hanmant and P.W.9 Arjun are not at all related to the deceased. It may be said in brief that all these witnesses have

narrated the incident that they saw the deceased and victim together somewhere near Subhani Pan Stall. They were talking between themselves. Thereafter, the witnesses noticed that, all of a sudden, accused drew out a pen-knife from his 'Dhoti' and inflicted two forceful blows to victim Shaikh Lal in chest and in the armpit on the left side of the victim.

7. The supporting evidence for these eye witnesses comes from two more prosecution witnesses namely Jumekhan (P.W.3) and Laxman (P.W.5). These are the witnesses who had chased the accused and disarmed him of the knife which he was carrying. It is the case of the prosecution that accused was caught on the spot and handed over to the police along with the knife that was snatched away from the accused.

8. Thus, the prosecution has direct eye witnesses on account of occurrence of incident in question from five witnesses including two related to the victim and three not at all related. The evidence of these witnesses is corroborated by two witnesses who chased the accused who was trying to run away after stabbing victim Shaikh Lal. Amongst these

two witnesses also if Jume Khan is related to deceased, P.W.5 Laxman is not at all related.

. Having gone through the cross-examination of these witnesses, defence has not been able to draw out any such material that will compel us to look to any of these witnesses with disbelief. In fact, Raheman's cross-examination consists only of suggestions denied by witness. Similar is the cross-examination of P.W.4 Dnyanoba and P.W.9 Arjun. Depositions of Jume Khan and Laxman compliment each other by referring to presence of each other in the action of chasing the accused and snatching away knife from the accused. No doubt, P.W.5 Laxman showed tendency of exaggeration to some extent. This is evident from the fact that during the depositions, he added spice to the story and the manner in which the accused was apprehended. His narration to the effect that accused was caused to lie down and thereafter by pressing leg on his wrist, the knife was required to be taken away, does not find place in his police statement. However, this exaggeration is too inadequate to disbelieve the story of chase and apprehension of the accused with knife, which is

consistently narrated not only by Jume Khan and Laxman but also by observer Dnyanoba.

. We cannot avoid reference to the F.I.R. In this matter, the F.I.R. was lodged at Pandharpur Taluka Police Station on the same day at 21.00 hours which was within three hours from the occurrence that took place at village Khardi. On reference to the F.I.R. which can be used not only for contradiction but also for drawing support to the deposition of the complainant, the deposition of P.W.8 Bashir stands fully supported by the F.I.R. So far as the relationship of some of the witnesses with the deceased, it is an admitted position that the accused is true brother-in-law of deceased Shaikh Lal (sister of Shaikh Lal is the wife of accused). This thickness of relationship rules out any possibility of related witnesses having any intention to inculpate the accused with false accusation and thus eliminate him. This is because the accused is husband of sister of deceased Shaikh Lal and elimination of accused from the routine life would ruin the matrimonial life of Shaikh Lal’s sister.

9. Advocate Ms.Kaushik tried to make best out of room that was available to her in the prosecution evidence which is strongly loaded with direct evidence, as described hereinabove of five eye witnesses and three witnesses who narrated story of the chase.

. According to advocate Ms.Kaushik although, all the witnesses have narrated same story, she referred to the timings at which all these witnesses narrated the incident to have occurred. According to Raheman (P.W.2), the incident occurred at about 6 or 6.15 p.m. Whereas, Dnyanoba has stated the same to have occurred at 6.00 p.m. P.W.5 Laxman claims that it was between 5.45 p.m. to 6.00 p.m. and according to Hanmant it was between 5.30 p.m. to 5.45 p.m. No doubt, there is some variance in the time of the incident as narrated by all the witnesses. However, it cannot be ignored that all the witnesses have narrated the time of incident by approximation and nobody had claimed the accuracy of the same by reference to wrist watch. We are, therefore, unable to accept the submission of advocate Ms.Kaushik that this variance between eye witnesses inter-se regarding

the time of occurrence, can be sufficient to draw an inference that at least, some of them might not have witnessed the incident.

. Ms.Kaushik pointed out that P.W.2 Raheman who is eye witness, has narrated the incident in such a manner that accused could not have inflicted injuries on the left side chest and left axila. This is because Raheman has deposed that the victim was walking ahead followed by the accused at a distance of couple of feet. Raheman has not deposed that after drawing out the pen-knife, accused overtook and thus reached infront of the victim. Eventually, such narration finds place in the F.I.R. although we are aware that F.I.R. is not a substantive piece of evidence. This can be an omission on the part of P.W.2 Raheman arising due to inadvertence and in the present case, Raheman not being the only eye witnesses, this inadvertent omission, does not discredit Raheman to such an extent, that he can be branded as unreliable witness.

10. Advocate Ms.Kaushik was critical because prosecution has not collected circumstantial

evidence by sending the knife which was said to be blood stained and the clothes of the accused for analysis to Forensic Science Laboratory. If at all this can be result of indifferent attitude on the part of investigating agency or result of complacency on the part of investigating agency being aware of availability of direct evidence, since the direct evidence is available, these lapses on the part of investigation do not affect adversely upon the merits of the prosecution case.

11. Lastly, advocate Ms.Kaushik urged that it is a case of only couple of blows. It is not the say of any of the witnesses that accused repeatedly dealt with the blows or that but for his apprehension accused could have continued to assault the victim. In fact, accused has run away immediately after inflicting couple of blows. She also drew our attention to deposition of P.W.2 Raheman who has narrated that the accused and deceased were talking with each other. The prosecution has come out with a case that there was heart-burning between the brothers-in-law because, land which was mortgaged by the accused, was redeemed by deceased Shaikh Lal and transferred in favour of his brother.

According to advocate Ms.Kaushik, the discussion on the issue of agricultural land, probably reached to a high temperature and therefore, accused can be said to have inflicted injuries upon the victim as a result of grave and sudden provocation and without having any intention to kill or without having any intention to inflict such an injury, which, in the ordinary course of nature, would result into death. The argument is aimed at pursuading the Court to hold that accused, if at all, is guilty of offence punishable under Section 304-II of IPC and not under Section 302 of IPC.

. On reference to nature of injuries, it can be seen that one blow has penetrated the heart and other blow cut across the lungs of the victim. In any case, the victim could not have survived with damage to his lungs and heart, even till the time some medical assistance could be secured. We have no hesitation to agree with the opinion of the Medical Officer that injuries were sufficient in the ordinary course of nature to result into death. Although the injuries are only couple of injuries, thus are fatal injuries. Although there was some discussion between brothers-in-law, there is no

sufficient material on record to enable us to consider the probability that there was so grave and sudden provocation on the part of the victim Shaikh Lal that deceased must have been deprived of the power of self-control. Once death has ensued as a result of action of the accused, the accused can escape from the clutches of punishment under Section 302 of IPC only if he is in a position to bring his case within the ambit of either of five exceptions to Section 300 of IPC. Upon having taken into consideration the evidence on record, we are afraid; advocate Ms.Kaushik does not have sufficient plat-form to successfully advance submission that offence falls under Section 304-II of IPC. We are fortified in taking such a view in the light of observation of the Supreme Court in the matter of **Virsa Singh Vs. State of Punjab reported in A.I.R. 1958 S.C. 465.**

12. Taking overall view of the evidence of five eye witnesses and three persons who claim to have chased and apprehended accused, even in the absence of some corroborative evidence such as Chemical Analyser’s report about the weapon and clothes of the accused or in the absence of documentary

evidence regarding the mortgage and redemption of land, which transactions admittedly took place by execution of documents, the prosecution story was rightly accepted by the trial Court and we find no reason to interfere with the findings, conviction and sentence as recorded by the trial Court.

13. Appeal is therefore, dismissed by confirming the judgment and order dated 19.7.2001 delivered by IInd Additional Sessions Judge, Pandharpur in Sessions Case No. 123 of 1998.

. The Registrar (Judicial) shall furnish certified copy of this judgment, free of costs, to the Appellant through prison authorities.

. Ms.S.S.Kaushik Advocate was appointed to prosecute the appeal on behalf of prisoner. We quantify her professional charges at Rs.2500/-.

[N.V.DABHOLKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]